



Volume 27 | Issue 3

Article 11

March 1921

Dedication--Effect of--Revocability of Dedication

W. F. K.

West Virginia University College of Law

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>



Part of the [Land Use Law Commons](#), and the [Property Law and Real Estate Commons](#)

Recommended Citation

W. F. K., *Dedication--Effect of--Revocability of Dedication*, 27 W. Va. L. Rev. (1921).

Available at: <https://researchrepository.wvu.edu/wvlr/vol27/iss3/11>

This Recent Case is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.

the protection the law intends him to have, and at the same time it prevents any unnecessary hardship on the adult.

—G. E. O.

RECENT CASES

DEDICATION—EFFECT OF—REVOCABILITY OF DEDICATION.—A landowner laid off a tract of land into lots with streets and alleys running through it, recorded a plat thereof, and sold lots with reference to the plat. The plaintiff improved one or two of the principal streets shown on the plat. One corner of the tract farthest from the town being on low ground and cut by several ravines, later was replatted and the defendant became the purchaser of one of the lots indicated on the second plat. Part of the defendant's lot included land that was indicated on the first plat as an alley, but the alley had not been improved by the plaintiff. The plaintiff brought this action to open the alley as shown on the original plat. Two questions are involved: (1) Whether acceptance by the municipality of the streets shown on the first plat was necessary in order to make the dedication irrevocable; (2) Whether an acceptance of part of the dedication is an acceptance of the whole. *Held*, the plaintiff cannot open the alley. *City of Point Pleasant v. Caldwell*, 104 S. E. 610 (W. Va. 1920).

When a landowner lays off his land into town lots intersected by streets and alleys, and sells lots with reference to such plat, some courts say the streets *etc.*, are thereby irrevocably dedicated to the public, and that no acceptance is necessary. *City of Florence v. Florence etc. Co.*, 85 So. 516 (Ala.); *Bozarth v. Egg Harbor City*, 103 Atl. 405 (N. J.). See 2 TIFFANY, REAL PROPERTY, 2 ed., 1868; 1 ELLIOTT, ROADS AND STREETS, 3 ed., 128. This rule seems to be unjust, especially when applied to quite a large tract of which only one lot has been sold. See *Wittson v. Dowling*, 179 N. C. 542, 103 S. E. 18. See also 2 TIFFANY, REAL PROPERTY, 2 ed., 1321, 1870. The better rule seems to be that by selling lots with reference to such plat the landowner does not thereby irrevocably dedicate to the public the public places indicated thereon, but merely offers them, and that they must be accepted before the dedication, so far as the rights of the general public are concerned, is irrevocable. *Stillman v. City of Olean*, 161 N. Y. Supp. 591; s. c. 228 N. Y. 322, 127 N. E. 267; *Rose v. Village of Eliza-*

bethtown, 275 Ill. 167, 114 N. E. 14; *City of Miami v. Florida etc. Co.*, 84 So. 726 (Fla.). The principal case, which is the first case in which the West Virginia court has been called upon to decide this question, seems to have definitely adopted the latter view. In those states where the rule of the principal case on this point is followed, the courts are not agreed as to the extent of acceptance necessary to make the dedication irrevocable. Some hold that an acceptance of one or more of the streets shown on the plat is an acceptance of all, unless a contrary intention be clearly shown. *Village of Lee v. Harris*, 206 Ill. 428, 69 N. E. 230; *Caruthersville v. Huffman*, 262 Mo. 367, 171 S. W. 323. Others hold that the dedicator may revoke the dedication as to those streets not actually accepted. *Moore v. City of Chicago*, 261 Ill. 56, 103 N. E. 583; *Kennedy v. Mayor, etc. of Cumberland*, 65 Mr. 514, 9 Atl. 234. See 3 DILLON, MUNICIPAL CORPORATIONS, 5 ed., 1734-1735. If the plat is considered as an offer on the part of the landowner to dedicate all the streets, etc., shown thereon as an entirety, it would seem logically to follow that the acceptance must be of the whole. Inasmuch, however, as this might impose undue burdens upon the municipality, without correspondingly benefiting anybody, it is thought that the doctrine of the principal case is the better view.

—W. F. K.

GIFTS—CHOSES IN ACTION—DELIVERY.—A father, by his will, gave a farm to his four younger sons. The farm was subject to a lien debt, which was evidenced by four bonds, and the four sons were to take the farm charged with such lien debt. During his lifetime the father paid certain of the bonds which had become due and told the sons, in conference, that they owed him the sum which he had paid. They tendered a check in payment, but he did not accept. He told them to pay the money to their two married sisters. The father died, and the question was whether the two married sisters could obtain the sum which the father had paid on the bonds. *Held*, they could not, but such sum should be paid to the father's estate. *Poff v. Poff*, 104 S. E. 719 (Va. 1920).

The general legal principle regulating gifts of personalty is that mere words of donation will not suffice to pass title. *Stratton v. Athol Savings Bank*, 213 Mass. 46, 99 N. E. 454. With